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COOTE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MUND & FESTER GMBH & CO. KG a/s/o
TRINIDAD EXPORTS,

'09 CIV 8180
2009 Civ.

Plaintiff,

COMPLAINT

- against -

M/V CSAV CHICAGO, their engines, boilers, tackle,
furniture, apparel, etc *in rem*; and COMPANIA SUD
AMERICANA DE VAPORES S.A., *in personam*

Defendants.
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Plaintiff, MUND & FESTER GMBH & CO. KG a/s/o TRINIDAD EXPORTS, by and through its attorneys, Casey & Barnett LLC, as and for its Complaint, alleges upon information and belief as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Jurisdiction is predicated upon 28 U.S.C. §1333.

2. At all material times, MUND & FESTER GMBH & CO. KG was and is a corporation organized and existing by virtue of the laws of a foreign state with an office and place of business located at Trostbrücke 1 20457 Hamburg, Germany and is the subrogated underwriter of a consignment of pears laden on board the M/V CSAV CHICAGO, as more specifically described below.

3. At all material times, TRINIDAD EXPORTS was and is a corporation organized and existing by virtue of the laws of a foreign state with an office and place of business located at Avenue del Valle 961, Of. 4701, Ciudad Empresarial, Chile and was the owner, shipper and/or assured of a consignment of pears laden on board the M/V CSAV CHICAGO, as more specifically described below.

4. Upon information and belief, defendant, COMPANIA SUD AMERICANA DE VAPORES S.A. (hereinafter "CSAV"), was and is a foreign corporation with an office and place of business located at 99 Wood Avenue South, 9th Floor, Iselin, New Jersey 08830, who owns, operates, manages and/or charters ocean-going vessels, including the M/V CSAV CHICAGO, that operate between various foreign and domestic ports and, in particular, within this district and was the owner, owner *pro hac vice*, charterer, manager and/or operator of the M/V CSAV CHICAGO, and at all relevant times, was and is doing business within the jurisdiction of this Honorable Court.

5. Upon information and belief, at all times hereinafter mentioned, defendant, M/V CSAV CHICAGO was and still is a vessel operated as common carriers of goods in ocean transportation for hire and upon information and belief, is now, or will be during the pendency of this action, within this District and subject to the jurisdiction of this Honorable Court.

6. Plaintiff brings this action on its own behalf and as agent and/or trustee on behalf of and for the interest of all parties who may be or become interested in the said consignment, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

RELEVANT FACTS

7. On or about June 25, 2008, a consignment, consisting of 1,280 cartons of pears, laden in Container number CRLU 1143199, then being in good order and condition, was

delivered to the M/V CSAV CHICAGO and the *in personam* defendants and/or their agents at the port of San Antonio, Chile for transportation to Elizabeth, New Jersey in consideration of an agreed upon freight, pursuant bill of lading number CHIW01G147547 dated June 25, 2008.

8. Thereafter, the aforementioned consignment was loaded aboard the M/V CSAV CHICAGO and the vessel sailed for its intended destination.

9. Upon discharge, it was discovered that the consignment was not in the same good order and condition as when received by the defendants, but instead, had suffered damages during transit as a result of exposure to high temperatures.

10. As a result of the damages sustained to the shipment, Trinidad Exports sustained a loss.

11. The damage to the cargo was not the result of any act or omission of the plaintiff but, to the contrary, was due solely as the result of the negligence, fault, neglect, breach of contract of carriage, and bailment on the part of the defendants.

12. At all times relevant hereto, a contract of insurance for property damage was in effect between Trinidad Exports and Mund & Fester GmbH & Co. KG, which provided coverage for, among other things, loss or damage to the consignment.

13. Pursuant to the aforementioned contract of insurance between Trinidad Exports and Mund & Fester GmbH & Co. KG, monies have been expended on behalf of Trinidad Exports to the detriment of Mund & Fester GmbH & Co. KG due to the damages sustained during transit.

14. As Mund & Fester GmbH & Co. KG has sustained damages as a result of said expenditures, expenditures rightly the responsibility of the defendants, Mund & Fester GmbH &

Co. KG has an equitable right of subrogation and is subrogated, to the extent of its expenditures, to the rights of its insured with respect to any and all claims for damages against the defendants.

15. By reason of the foregoing, plaintiff has been sustained losses which will be shown with specificity at trial, no part of which has been paid, although duly demanded, which are presently estimated to be no less than \$14,821.00.

WHEREFORE, Plaintiff prays:

1. *In rem* service of process be issued against the M/V CSAV CHICAGO, their engines, boilers, tackle, furniture, apparel, etc.; that the vessel be seized and that all those claiming an interest in her be cited to appear and answer under oath both all and singular the matters aforesaid;

2. The M/V CSAV CHICAGO their engines, boilers, tackle, furniture, apparel, etc., be condemned and sold to satisfy the judgments herein in favor of plaintiff;

3. The Court order, adjudge and decree that defendants, COMPANIA SUD AMERICANA DE VAPORES S.A. and the M/V CSAV CHICAGO, be found joint and severally liable and pay to plaintiff the losses sustained herein, together with pre-judgment and post judgment interest thereon and their costs, and;

4. That this Court grant to plaintiff such other and further relief as may be just and proper.

Dated: New York, New York
September 25, 2009
260-105

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